APPENDIX A

UNITED STATES of America,
Plaintiff-Appellee,

v.

Mary Jane JENKINS,
Defendant-Appellant.

No. 92--2002

United States Court of Appeals,
Fifth Circuit.

Oct. 5, 1992.

Appeal from the United States District Court for the Southern District of Texas.

Before VAN GRAAFEILAND *, KING and EMILIO M. GARZA, Circuit Judges.

VAN GRAAFEILAND, Circuit Judge:

Mary Jane Jenkins appeals from an order denying her motion to dismiss, dissolve or modify a pretrial restraining order issued pursuant to 18 U.S.C. § 1963(d). We affirm.

On April 9, 1991, a grand jury sitting in the Southern District of Texas indicted Jenkins and five individual co-defendants, charging them, among other things, with conducting and conspiring to conduct an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962 ("RICO"). The alleged enterprise consisted not only of the six defendants, but also sixteen unindicted corporations, each of which allegedly was controlled by Jenkins. Except for two foreign holding companies, the corporations were scattered throughout the South. All

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* Senior Circuit Judge of the Second Circuit, sitting by designation.

of them allegedly were connected directly or indirectly with the operation of adult bookstores and/or peep show video arcades. The indictment listed ten predicate racketeering acts, nine of which dealt with the transportation of obscene material in interstate commerce, 18 U.S.C. §§ 1462 and 2, and one which dealt with the promotion of obscene material, Tex.Penal Code § 43.23 and 18 U.S.C. § 1961(1)(A). The indictment asserted a penalty of forfeiture under 18 U.S.C. § 1963(a), and sought forfeiture of the sixteen corporations, bank accounts belonging to several of the corporations, money seized in prior raids, and Jenkins' automobile and residence.

On April 10, 1991, the government obtained an *ex parte* restraining order pursuant to 18 U.S.C. § 1963(d), which in substance prohibited the defendants and the unindicted corporations from selling, assigning, transferring, encumbering or removing from the jurisdiction of the court any assets owned by or owed to them. The order required that weekly payments to Jenkins (the proceeds of a 1989 sale of four adult bookstores) be turned over to the United States Marshals Service, to be held until forfeitable upon conviction. It also directed defendants to maintain the properties and "to abstain from using the . . . properties and enterprises in any way to violate any state, federal or local laws." Finally, the order provided that:

> No person shall consider this Order as a restraint or prohibition to the carrying on of any lawful activity or business, and the above mentioned businesses and commercial establishments are not restrained or prohibited from operating any lawful businesses in a normal business manner, including the payment of salaries, outstanding debts, and liabilities that exist as of the date of the filing of this Order, as long as the normal conduct of business does not dissipate or diminish the value, as of April 9, 1991, of the assets, properties, and interests subject to forfeiture to the government. Nothing in this Order shall be construed to

restrain the dissemination of visual or printed matter, nor to condone the illegal sale or distribution of obscene material.

On July 17, 1991, Jenkins moved that the order be dissolved and requested a hearing, which was held on September 27, 1991. Jenkins' principal argument was that both RICO's substantive prohibitions and its forfeiture and restraining order provisions are unconstitutional as applied to those charged with selling obscene materials. On November 20, the district court denied Jenkins' motion, largely because the challenged order allowed the parties to continue their operations, including the selling of the allegedly obscene material.

[1, 2] Under the law of this circuit, the district court's denial of Jenkins' motion is an interlocutory order refusing to modify or dissolve an injunction, and, as such, is immediately appealable under 28 U.S.C. § 1292(a)(1). *See United States v. Thier*, 801 F.2d 1463 (5th Cir. 1986), *modified on other grounds*, 809 F.2d 249 (5th Cir. 1987) (accepting a similar appeal without discussion of appealability). To say that the order below is appealable, however, is not to say that we should consider all the wide-ranging issues Jenkins has raised. As a general rule, courts of appeals should conduct only a limited review in interlocutory appeals, and should address only the propriety of the order that gave rise to the appeal. *See Brown v. Chote*, 411 U.S. 452, 456-57, 93 S.Ct. 1732, 1735-36, 36 L.Ed.2d 420 (1973); *Enterprise Int'l v. Corporacion Estatal Petrolera*, 762 F.2d 464, 470 (5th Cir. 1985). Judicial restraint is especially appropriate where, as here, we are asked to reach out and decide broad and difficult constitutional questions. "Constitutional questions should be decided only when unavoidable, and this is particularly true when the issue is raised on appeal from an interlocutory order." *Yahr v. Resor*, 431 F.2d 690, 691 (4th Cir. 1970), *cert. denied*, 401 U.S. 982, 91 S.Ct. 1192, 28 L.Ed.2d 334 (1971). *See also Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 501-03, 105 S.Ct. 2794, 2800-02, 86 L.Ed.2d 394 (1985).

If we were to consider Jenkins' facial challenges to RICO at this stage in the proceedings, we would have to do so without the benefit of a complete record, specialized findings of fact, and the reasoned judgment of the district court. These are important in any constitutional case, but are especially so in First Amendment cases concerning allegedly obscene materials, where the extent of the Constitution's protection may vary depending on the circumstances. Finally, and of particular significance, we note that the United States Supreme Court recently has granted certiorari in *Alexander v. Thornburgh*, 943 F.2d 825 (8th Cir. 1991), *cert. granted*, __ U.S. __, 112 S.Ct. 3024, 120 L.Ed.2d 895 (1992), a case raising similar concerns about the constitutionality of RICO's forfeiture and restraining order provisions as applied to those dealing in allegedly obscene materials. Wisdom dictates that we await the Supreme Court's teaching.

Insofar as Jenkins' appeal is limited to the validity of the restraining order, she urges the following four grounds for reversal: (1) the order is an impermissible prior restraint of protected First Amendment activity; (2) by directing the seizure of funds and the delivery of money to United States Marshals, the order indirectly restrains her in the exercise of protected First Amendment rights; (3) the issuance of the *ex parte* restraining order denied her procedural due process; and (4) the order is overbroad because it affects unindicted third parties.

[3,4] It is, of course, well-settled that the government may not seize presumptively protected expressive materials without a prior judicial determination of obscenity. *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 63, 109 S.Ct. 916, 927, 103 L.Ed.2d 34 (1989); *Universal Amusement Co. v. Vance*, 587 F.2d 159, 169 (5th Cir. 1978) (en banc), *aff'd*, 445 U.S. 308, 100 S.Ct. 1156, 63 L.Ed.2d 413 (1980). However, the restraining order did not effect such a seizure. *See United States v. Alexander*, 736 F.Supp. 968, 973 (D. Minn. 1990). Indeed, the order explicitly provides that "the above mentioned businesses and commercial

establishments are not restrained or prohibited from operating any lawful business in a normal business manner," and that "[n]othing in this Order shall be construed to restrain the dissemination of visual or printed matter." As the Government conceded at oral argument, this restraining order does not interfere with the sale even of obscene materials.

Admittedly, the restraining order at issue here could have been drafted more clearly. The Government describes as "surplus" the order's "obey the law" admonition that the named defendants and corporations "abstain from using the . . . properties and enterprises in any way to violate any state, federal or local laws." If surplusage, the clause would have been better omitted. On balance, however, it is outweighed by the other portions of the order, which permit Jenkins to continue to conduct business and disseminate presumptively protected materials.

[5] Contrary to Jenkins' claim, the order is not invalid because it directs the seizure of certain funds and the payment of certain other moneys received to United States Marshals. Although restraints on the use of funds might under some circumstances improperly impede a defendant's ability to exercise First Amendment rights, there is nothing to indicate that this has occurred in the instant case. As the district court found, "the defendant has continued conducting business. There is no evidence that the businesses have not been able to pay their bills as a result of this order, or to otherwise conduct the businesses' day-to-day operations."

[6] Jenkins' procedural due process arguments likewise are without merit. It cannot be gainsaid that a post-indictment petition for a restraining order stands on a stronger footing that a pre-indictment petition. *Compare* 18 U.S.C. § 1963(d)(1)(A) *with* § 1963(d)(1)(B) *and* -(d)(2); *see United States v. Musson*, 802 F.2d 384, 386-87 (10th Cir. 1986); *United States v. Pryba*, 674 F.Supp. 1504, 1508 (E.D. Va. 1987). In applying *ex parte* for

the order at issue herein, the Government asserted that it might suffer irreparable harm if the order was not entered because the defendants or their agent might "sell, alienate, encumber, transfer or otherwise place the above-described property beyond forfeitable condition and thereby frustrate the ends of public justice." In signing the proposed order, the district court said it was doing so "to assure that the defendants, and their agents, servants, employees, attorneys and those in active concert or participation with them, do not place certain property beyond the jurisdiction of this Court or otherwise detrimentally affect the Government's interest in such property, thereby frustrating the ends of justice and causing irreparable harm to the United States, by defeating the jurisdiction of this Court over such property."

In the district court's order which followed a hearing on Jenkins' motion to quash, the district court reiterated its previously stated reasoning that "the [seizure] order seeks to assure that if the government prevails on its claim(s) under RICO, the property affected by the forfeiture provisions of RICO is not beyond the jurisdiction of this Court." The district court also held that the 10-day limitation on restraining orders contained in Fed. R.Civ.P. 65(b) was mooted by the hearing which the district court held or alternatively that the time limitation was waived by the delay in seeking a hearing on the motion. The procedure followed by the district court satisfied the due process requirements summarized by this court in *United States v. Thier, supra,* 801 F.2d at 1466-69.

[7] Finally, we are not persuaded by Jenkins' argument that the restraining order, by binding unindicted corporations, is impermissibly overbroad. Nothing in the language of RICO's restraining order provision restricts the scope of such orders so that only parties may be bound; to the contrary, RICO permits the court to "take any other action" deemed necessary "to preserve the availability of property" subject to forfeiture. 18 U.S.C. § 1963(d)(1). Indeed, equity traditionally has permitted third par-

ties to be bound in circumstances such as those alleged here. As the Supreme Court noted in examining Fed.R.Civ.P. 65(d):

> [A] decree of injunction not only binds the parties defendant but also those identified with them in interest, in "privity" with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.

Regal Knitwear Co. v. NLRB, 324 U.S. 9, 14, 65 S.Ct. 478, 481, 89 L.Ed. 661 (1945).

The Government, when seeking a restraining order under § 1963(d)(1), need only "articulate a cogent thesis or theory of its entitlement" to potentially forfeitable property. *United States v. Regan*, 699 F.Supp. 36, 38 (S.D.N.Y.1988). This it has done. These corporations, it is alleged, are not innocent, unrelated third parties, but rather are an integral part of the criminal enterprise and under Jenkins' total and exclusive control. The district court did not err in finding that it was necessary to bind the sixteen unindicted corporations in order to preserve assets subject to forfeiture.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CRIM. ACTION NO. H-91-50-1

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MARY JANE JENKINS, ET AL.,
Defendants

ORDER DENYING THE DEFENDANT'S MOTION TO QUASH

[Entered: Nov. 21, 1991]

Pending before the Court is the defendant's, Mary Jane Jenkins, motion to dissolve the *ex parte* restraining order that was entered by this Court on or after February 10,1991, pursuant to Title 18 U.S.C. § 1963(d). After a review of the motion, response, and supporting authorities and arguments of counsel, the Court is of the opinion that the defendant's motion should be denied.

Background:

On or about April 9, 1991, a Grand Jury returned a multiple count indictment against the defendant and several others finding probable cause to believe that the defendants had committed acts in violation of the Racketeering, Influence and Corruption Organizations Act ("RICO"), and conspiracy arising out of the interstate sale of allegedly obscene materials.

Contentions and Discussion

The defendant contends that the restraining order is an impermissible prior restraint on protected First Amendment activity and that the pretrial restraining order is a seizure of the defendant's property. As an aside, the defendant argues that the restraining order had a life of 10 days and has long since expired. This latter argument will not be addressed because in the Court's opinion it is mooted by this hearing; alternatively, the argument was waived by the delay in seeking a hearing on the motion.

The defendant's contentions that the restraining order is an impermissible prior restraint and that it also constitutes a seizure, turn on the question of whether the conduct permitted by the restraining order constitutes a pretrial seizure. Thus, the Court's attention will be focused on this issue.

The Court's restraining order enjoined the defendants from:

> selling, assigning, pledging, distributing, encumbering or otherwise disposing of, or removing from the jurisdiction of this Court all or any part of their interest, direct or indirect, in the property described . . . in the Indictment.

The Court also enjoined alienation of any interest that the defendants might have in the proceeds derived from the corporate entities as well as various personal property which source may be traced to the businesses that are the subject of the alleged racketeering activities.

The defendant directs the Court to several cases that she believes support her contentions. Specifically, the Court is directed to *Ft. Wayne Books Inc. v. Indiana*, 489 U.S. 46 (1989); *Bantam Books. Inc. v. Sullivan*, 372 U.S. 58 (1963); *Penthouse International Limited v. McAuliffe*, 610 F.2d 1354 (5th Cir. 1980). These cases, the defendant argues, stand for the proposition that a pretrial restraining order in a *per se* violation of the First Amendment because the order permits, at the very least,

constructive seizure of expressive and non-expressive property. The defendant has supplemented her motion to dismiss by citing *United States v. California Publishers Liquidating Corporation. et al.*, No. 3-90-318-H (N. D. Texas 1991).

In this Court's opinion the case that is more analogous to the one at bar is the *United States v. Alexander. et al.*, 736 F. Supp. 968 (D. Minn. 1990). In *Alexander*, the court focused on a pretrial restraining order that had been entered against the defendants pursuant to Title 18 U.S. C. § 1963. Like the case at bar, the constitutionality of the application of the RICO forfeiture provisions to expressive and non-expressive property was at issue. Having considered the reasoning stated in *Alexander*, this Court is of the opinion that the restraining order is valid and should remain in effect.

Here, the Court has fashioned its order sufficiently narrow such that the defendant may continue in the business of selling constitutionally protected materials. Moreover, the order is clear and sufficiently precise that the defendant knows the specific materials that have been targeted. (Specific materials were seized pursuant to search warrant(s) and pursuant to the indictments). Under the terms of the Court's order, the defendant has continued conducting business. There is no evidence that the businesses have not been able to pay their bills as a result of this order, or to otherwise conduct the businesses' day-to-day operations.

Specifically, the order seeks to assure that if the government prevails on its claim(s) under RICO, the property affected by the forfeiture provisions of RICO is not beyond the jurisdiction of this Court. The day-to-day activities of selling books and magazines have not been impaired by this order. The fact that the defendants are more cautious about the products that they are selling is not prior restraint. It is against the law to sell obscene materials. That fact alone is sufficient reason to pause and be cautious.

The First Amendment is not implicated by the restraint from sale or use of personal or real property that is derived from First Amendment activities. Thus, the First Amendment protections do not apply to a printing press in spite of the fact that a printing press may generate a document that enjoys First Amendment protection.

The defendant's motion to quash the temporary restraining order is DENIED because there is no pretrial seizure of materials protected by the First Amendment.

The defendants' contentions concerning the constitutionality of RICO are reserved.

Signed this 20th day of November, 1991.

/s/Kenneth M. Hoyt
KENNETH M. HOYT
UNITED STATES
DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CRIMINAL NUMBER: H-91-50

UNITED STATES OF AMERICA

V.

MARY JANE JENKINS
a/k/a MARIJANE JACKSON
a/k/a LYNDA GRAY ENTRATTER
a/k/a LYNDA IVEY

EVAN PETER PIGMAN
a/k/a PETE PIGMAN

JO ANN ROCHELLI

DAVID CARL STUBBS

RICKIE HERBERT RANNEY
a/k/a RICK RANNEY

ROBERT EUGENE SMITH

CHARLES WILLIAM BOYLE

LARRY WAYNE MALADY

ORDER

[Entered: Apr. 10, 1991]

This matter having come before the Court on *ex parte* Motion of the United States of America for a restraining order pursuant to Title 18, United States Code, Section 1962 and 1963 which provides for jurisdiction to enter restraining orders and take such other actions as the Court shall deem necessary in connection with any property or other interest subject to forfeiture pursuant to Section 1963 of Title 18, United States Code.

The court finds it necessary to enter this Order as prayed for by the United States, to assure that the defendants, and their agents, servants, employees, attorneys and those in active concert or participation with them, do not place certain property beyond the jurisdiction of this Court or otherwise detrimentally affect the Government's interest in such property, thereby frustrating the ends of justice and causing irreparable harm to the United States, by defeating the jurisdiction of this Court over such property.

IT IS HEREBY ORDERED that the defendants, MARY JANE JENKINS a/k/a LYNDA GRAY ENTRATTER a/k/a LYNDA IVEY, EVAN PETER PIGMAN a/k/a PETE PIGMAN, JO ANN ROCHELLI, DAVID CARL STUBBS, RICKIE HERBERT RANNEY a/k/a RICK RANNEY and LARRY WAYNE MALADY, their agents, servants, employees, attorneys, family members, and those persons in active concert or participation with them, are hereby ordered and enjoined from selling, assigning, pledging, distributing, encumbering, or otherwise disposing of, or removing from the jurisdiction of this Court all or any part of their interest, direct or indirect, in the property described in the Forfeiture section of the Indictment returned by the United States Grand Jury for the Southern District of Texas on April 9, 1991. Such property is described in that portion of the Indictment as follows:

1. IT IS HEREBY FURTHER ORDERED that the defendants, and those corporations named in the forfeiture allegations of the indictment, their servants, employees, attorneys, and those persons in active concert or participation with them are prohibited from selling, assigning, or transferring or removing from the jurisdiction of this Court without prior approval of the Court and upon notice to the United States with an opportunity for the United States to be heard, any right, title, or interest in or any assets from, belonging to, or owed to the corporations, or entities known as:

A. Mustatara Investments, N.V. (Mustatara), a foreign holding company in the Netherlands Antilles;

B. Jabar, Limited (Jabar), a foreign holding company in the Bahamas;

C. Phoenix and Associates Management, Ltd. (Phoenix Management), a Nevada corporation, formerly operating as Ibron Industries, Inc., a California corporation, and Praxis Management Company, a California corporation;

D. Saxet Management, Inc. (Saxet Management), a Texas corporation, doing business as **World News,** an adult bookstore/video arcade at 3305 East Highway 80, Abilene, Texas and **Talk of the Town,** an adult bookstore/video arcade at 321 Linda Drive, San Marcos, Texas;

E. Saxet, Inc. (Saxet), a Georgia corporation, doing business as **Bellaire News,** an adult bookstore/video arcade at 5807 Bellaire Boulevard, Houston, Texas; **Arcade News,** an adult bookstore/video arcade at 5821 Hillcroft, Houston, Texas; and **Doc Johnson's Arcade,** an adult bookstore/video arcade at 6431 Hillcroft, Houston, Texas;

F. La Grange Trading Company (La Grange Trading), a California corporation, doing business as **Diner's News,** an adult bookstore/video arcade at 240 Westheimer, Houston, Texas; **Apollo** News, an adult bookstore/video arcade at 2376 Austin Highway, San Antonio, Texas; **Pleasure Shoppe,** an adult bookstore/video arcade at 603 West Oltorf, Austin, Texas; and **Airline Book Store,** an adult bookstore/video arcade at 1824 Airline Highway, Kenner, Louisiana;

G. Lamar Avenue Books, Inc. (Lamar Avenue Books), a Tennessee corporation, doing business as **Cherokee Theater,** an adult bookstore/video arcade at 2747 Lamar Avenue, Memphis, Tennessee;

H. East Brooks Books, Inc. (East Brooks Books), a Tennessee corporation, doing business as **Airport Theater,** an adult bookstore/video arcade at 2214 East Brooks Road, Memphis, Tennessee, and **Get Well Bookmart,** an adult bookstore/video arcade at 1275 Get Well Road, Memphis, Tennessee;

I. Business Financial Services, Inc. (Business Financial services), a Georgia corporation, doing business as **West Knoxville News,** an adult bookstore/video arcade at 5005 Kingston Pike, Knoxville, Tennessee;

J. Anwar Enterprises, Inc. (Anwar Enterprises), an Alabama corporation, doing business as **Birmingham Books,** an adult bookstore/video arcade at 7610 First Avenue North, Birmingham, Alabama;

K. Western Adult Enterprises, Inc. (Western Adult Enterprises), an Alabama corporation, doing business as **Alabama Adult Books,** an adult bookstore/video arcade at 901 Fifth Avenue North, Birmingham, Alabama;

L. Richland Bookmart, Inc. (Richland Bookmart), a South Carolina corporation, doing business as **Town and Country,** an adult bookstore/video arcade at 7011 Clinton Highway, Knoxville, Tennessee;

M. Sommer Avenue Books, Inc. (Sommer Avenue Books), a Tennessee corporation, doing business as **Paris Theater,** an adult bookstore/video arcade at 2432 Sommer Avenue, Memphis, Tennessee;

N. Stuart Services Company (Stuart Services), a Nevada corporation;

O. Jabar Leasing Company, Ltd. (Jabar Leasing), a California corporation;

P. Sixth Ray, Inc. (Sixth Ray), a Georgia corporation, doing business as **Unique Beauty Supply** in the state of Georgia;

2. IT IS HEREBY FURTHER ORDERED that the defendants, and those corporations named in the forfeiture allegations of the indictment, their servants, employees, attorneys, and those persons in active concert or participation with them are prohibited from selling, assigning, or transferring or removing from the jurisdiction of this Court without prior approval of the Court and upon notice to the United States with an opportunity for the United States to be heard, any right, title, or interest in the following assets:

A . The following vehicle or, if sold, the proceeds therefrom:

(1) One 1987 Nissan 300ZX coupe, VIN JNlCZ14S2HX150668, registered to Gelco Corporation/Lynda Entratter, 605 Old Ballas Road, St. Louis, Missouri 63141.

B. The following personal property and the proceeds therefrom:

(1) approximately $33,880.97 cash seized by agents of the Federal Bureau of Investigation from the safe in STUBB'S warehouse, 7397 Ashcroft, Houston, Texas on June 30, 1988;

(2) cashiers checks and the proceeds therefrom seized by agents of the Federal Bureau of Investigation from the safe in STUBB'S warehouse, 7397 Ashcroft, Houston, Texas on June 30, 1988 as follows:

a. First National Bank, Paragould, Arkansas cashier's check #29542, 6/29/88, to Saxet Special Account in the amount of $1,500.00;

b. First National Bank, Paragould, Arkansas cashier's check #29544, 6/29/88, to White Fabricating Co. in the amount of $2,719.75;

c . First National Bank, Paragould, Arkansas cashier's check #29541, 6/29/88, to Concorde Development Co. in the amount of $2,000.00;

d. Colonial Bank, Birmingham, Alabama official cashier's check #314944155, 6/27/88, to Alabama Adult Books in the amount of $1,795.00;

e. Merchant's Bank, Kenner, Louisiana cashier's check #A138645, 6/27/88, to White Fabricating Co., Inc. in the amount of $3,856.50;

(3) approximately $9,033.18 seized by agents from the Federal Bureau of Investigation from a safe inside Arcade News Bookstore, 5821 Hillcroft, Houston, Texas on June 30, 1988.

C. The following real property and the proceeds therefrom:

(1) Lots 6 and 7 of Forest Park Addition and in Block No. 4907 A of the city of St. Louis, State of Missouri, having an aggregate front of 200 feet on the north line of said addition; bounded on the east by lot no. 5 and the west by lot no. 8 of said block and addition and south by Portland Place, together with all buildings, fixtures, and improvements thereon.

3. IT IS HEREBY FURTHER ORDERED that the defendant JENKINS' interests in **Arcade News, Bellaire News, Doc Johnsons, and Diner's News,** memorialized in and represented by an Asset Purchase And Sale Agreement, attached hereto as Exhibit 1, including a weekly payment schedule, payments on which are still being made at the present time from HIHOUSTON, Inc. a duly chartered Texas corporation, with its registered office

at 100 N.E. Loop 410, Suite 1070, in the City of San Antonio, County of Bexar, State of Texas, referred to in the agreement as the "buyer" be paid by the "buyer" and his successors and assigns in the periodic amounts due on the note as reflected on the payment schedule included therein to the United States Marshalls [sic] Service, to be held by them for the period of the order and until such time as the proceeds of the note become forfeitable upon conviction.

4. IT IS HEREBY FURTHER ORDERED that the United States Marshall [sic] Service be allowed access to the aforementioned corporations, enterprises and properties and their books and records periodically and at all reasonable times without prior notice ^ (, in the most unobtrusive manner possible, [K.H.]) to assure that the order sought herein is being complied with and, to this end, that the defendants and their agents cooperate with and provide the information and all the supporting documents necessary for the United States Marshall [sic] Service to discharge their duties.

5. IT IS HEREBY FURTHER ORDERED that the defendants and corporations named in the forfeiture allegations of this indictment comply in all respects with all provisions of this restraining order including maintaining all property in accordance with this order, maintaining insurance on all properties and providing information and cooperating with respect to all matters contained herein, and to abstain from using the above-described properties and enterprises in any way to violate any state, federal or local laws.

6. IT IS HEREBY FURTHER ORDERED that the Defendants refrain from taking any actions in the normal conduct of their business that would not be considered standard, normal business practices of a reasonable and prudent business person.

7. IT IS HEREBY FURTHER ORDERED that the government's original ex parte motion for restraining order,

amended ex parte motion for restraining order, and the orders signed by this Court related to these motions be SEALED, and that no person shall have access to same except the Clerk or his designated deputies, attorneys for the United States, and authorized representatives of the Federal Bureau of Investigation, Internal Revenue Service and U.S. Marshal Service.

No person shall consider this Order as a restraint or prohibition to the carrying on of any lawful activity or business, and the above mentioned businesses and commercial establishments are not restrained or prohibited from operating any lawful businesses in a normal business manner, including the payment of salaries, outstanding debts, and liabilities that exist as of the date of the filing of this Order, as long as the normal conduct of business does not dissipate or diminish the value, as of April 9, 1991, of the assets, properties, and interests subject to forfeiture to the government. Nothing in this Order shall be construed to restrain the dissemination of visual or printed matter, nor to condone the illegal sale or distribution of obscene material.

SIGNED on this the 10th day of April, 1991, at Houston, Texas.

/s/Kenneth Hoyt
United States District Judge

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 1

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances."

18 U.S.C. § 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means . . . Sections 1461-1465 (relating to obscene matter) . . .

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

* * *

18 U.S.C. § 1962. Prohibited activities . . .

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. § 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from

an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (I) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)(l) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest

in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction. be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited. the court may, upon application of the United States. enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees. or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United Sates or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or Interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in

irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the ,proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter. or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (1), no party claiming an interest in property subject to forfeiture under this section may

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged Interest in the property subsequent to the filing of an indictment or

information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(*l*)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United State [sic] pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of

purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (I) through (5).

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CRIMINAL NUMBER: H-91-50

UNITED STATES OF AMERICA

V.

MARY JANE JENKINS
a/k/a MARIJANE JACKSON
a/k/a LYNDA GRAY ENTRATTER
a/k/a LYNDA IVEY

EVAN PETER PIGMAN
a/k/a PETE PIGMAN

JO ANN ROCHELLI

DAVID CARL STUBBS

RICKIE HERBERT RANNEY
a/k/a RICK RANNEY

ROBERT EUGENE SMITH

CHARLES WILLLIAM BOYLE

LARRY WAYNE MALADY

GOVERNMENT'S AMENDED *EX PARTE* MOTION FOR A RESTRAINING ORDER

[Filed: Apr. 10, 1991]

The United States Attorney for the Southern District of Texas, by and through the undersigned Special Assistant United States Attorney and/or Assistant United States Attorney, moves this Court for a restraining order and other relief as set forth below:

1. On April 9, 1991 MARY JANE JENKINS a/k/a LYNDA GRAY ENTRATTER a/k/a LYNDA IVEY, EVAN PETER

PIGMAN a/k/a PETE PIGMAN, JO ANN ROCHELLI, DAVID CARL STUBBS, RICKIE HERBERT RANNEY a/k/a RICK RANNEY and LARRY WAYNE MALADY, were named in the indictment charging R.I.C.O. and conspiracy to commit R.I.C.O. in violation of Title 18, United States Code, Section 1962(a), 1962(b) and 1962(c) returned in the Southern District of Texas.

2. The Forfeiture allegations of the indictment allege that certain propriety interests of the defendant JENKINS, were forfeitable to the United States under the R.I.C.O. criminal forfeiture provisions of Title 18, United States Code Sections 1963(a), 1963(b) and 1963(c). That section of the indictment is incorporated by reference into this motion as follows:

3. That all of the above-described property and interests of the defendant JENKINS are forfeitable upon conviction.

4. That the government's right to the assets described in the indictment attached as of the date those assets were acquired, maintained or utilized in violation of the R.I.C.O. statute (18 U.S.C. Sections 1962, 1963).

5. Restraining a disposition of defendant JENKINS' assets is necessary to the state of the proceedings for two reasons, first, to the extent those assets were acquired or utilized in violation of the R.I.C.O. statute, they are held in constructive trust for the benefit of the government. Secondly, the public's interest in the property for which the grand jury found probable cause to believe is forfeitable demands that an accurate accounting of said property be available and that depletion of the assets by the defendants and their agents be precluded, and further, such action will prevent innocent third parties from entangling themselves in the forfeiture and collection process.

6. The United States may suffer irreparable harm if a restraining order is not entered because the defendants, or their agent may sell, alienate, encumber, transfer or otherwise place the

above-described property beyond forfeitable condition and thereby frustrate the ends of public justice.

7. The defendant JENKINS sold and disposed of her interests in **Arcade News, Bellaire News, Doc Johnsons,** and **Diner's News,** memorialized in an Asset Purchase And Sale Agreement, attached hereto as Exhibit 1. That agreement sets out a weekly payment schedule, payments on which are still being made at the present time from HIHOUSTON, Inc. a duly chartered Texas corporation, with its registered office at 100 N.E. Loop 410, Suite 1070, in the City of San Antonio, County of Bexar, State of Texas, referred to in the agreement as the 'buyer".

8. This motion was originally filed under Miscellaneous Case Number 91-246 on April 9, 1991, following the return of this indictment under seal. The Honorable Lynn Hughes denied the motion without prejudice.

WHEREFORE, the government requests that the Court reconsider this motion and enter an order:

1. Prohibiting the individual defendants, and listed corporations and entities, their servants, employees, attorneys, and those persons in active concert or participation with them from selling, assigning, or transferring or removing from the jurisdiction of this Court without prior approval of the court and upon notice to the United States with an opportunity for the United States to be heard, any right, title, or interest in or related accounts of any kind, purpose or nature maintained at any bank or financial institution wherever located, whether foreign or domestic or any assets from, belonging to, or owed to the corporations or entities known as:

A. Mustatara Investments, N.V. (Mustatara), a foreign holding company in the Netherlands Antilles;

B. Jabar, Limited (Jabar), a foreign holding company in the Bahamas;

C. Phoenix and Associates Management, Ltd. (Phoenix Management), a Nevada corporation, formerly operating as Ibron Industries, Inc., a California corporation, and Praxis Management Company, a California corporation;

D. Saxet Management, Inc. (Saxet Management), a Texas corporation, doing business as **World News,** an adult bookstore/video arcade at 3305 East Highway 80, Abilene, Texas and **Talk of the Town,** an adult bookstore/video arcade at 321 Linda Drive, San Marcos, Texas;

E. Saxet, Inc. (Saxet), a Georgia corporation, doing business as **Bellaire News,** an adult bookstore/video arcade at 5807 Bellaire Boulevard, Houston, Texas; **Arcade News,** an adult bookstore/video arcade at 5821 Hillcroft, Houston, Texas; and **Doc Johnson's Arcade,** an adult bookstore/video arcade at 6431 Hillcroft, Houston, Texas;

F. La Grange Trading Company (La Grange Trading), a California corporation, doing business as **Diner's News,** an adult bookstore/video arcade at 240 Westheimer, Houston, Texas; **Apollo** News, an adult bookstore/video arcade at 2376 Austin Highway, San Antonio, Texas; **Pleasure Shoppe,** an adult bookstore/video arcade at 603 West Oltorf, Austin, Texas; and **Airline Book Store,** an adult bookstore/video arcade at 1824 Airline Highway, Kenner, Louisiana;

G. Lamar Avenue Books, Inc. (Lamar Avenue Books), a Tennessee corporation, doing business as **Cherokee Theater,** an adult bookstore/video arcade at 2747 Lamar Avenue, Memphis, Tennessee;

H. East Brooks Books, Inc. (East Brooks Books), a Tennessee corporation, doing business as **Airport Theater,** an adult bookstore/video arcade at 2214 East Brooks Road, Memphis, Tennessee, and **Get Well Bookmart,** an adult bookstore/video arcade at 1275 Get Well Road, Memphis, Tennessee;

I. Business Financial Services, Inc. (Business Financial Services), a Georgia corporation, doing business as **West Knoxville News,** an adult bookstore/video arcade at 5005 Kingston Pike, Knoxville, Tennessee;

J. Anwar Enterprises, Inc. (Anwar Enterprises), an Alabama corporation, doing business as **Birmingham Books,** an adult bookstore/video arcade at 7610 First Avenue North, Birmingham, Alabama;

K. Western Adult Enterprises, Inc. (Western Adult Enterprises), an Alabama corporation, doing business as **Alabama Adult Books,** an adult bookstore/video arcade at 901 Fifth Avenue North, Birmingham, Alabama;

L. Richland Bookmart, Inc. (Richland Bookmart), a South Carolina corporation, doing business as **Town and Country,** an adult bookstore/video arcade at 7011 Clinton Highway, Knoxville, Tennessee;

M. Sommer Avenue Books, Inc. (Sommer Avenue Books), a Tennessee corporation, doing business as **Paris Theater,** an adult bookstore/video arcade at 2432 Sommer Avenue, Memphis, Tennessee;

N. Stuart Services Company (Stuart Services), a Nevada corporation;

O. Jabar Leasing Company, Ltd. (Jabar Leasing), a California corporation;

P. Sixth Ray, Inc. (Sixth Ray), a Georgia corporation, doing business as **Unique Beauty Supply** in the state of Georgia;

2. Prohibiting the individual defendants, and listed corporations and entities, their servants, employees, attorneys, and those persons in active concert or participation with them from selling, assigning, or transferring or removing from the jurisdiction of

this Court without prior approval of the court and upon notice to the United States with an opportunity for the United States to be heard, any right, title, or interest in or any assets from, belonging to, or owed to JENKINS relating to the vehicle referred to in the forfeiture allegations contained in the indictment.

3. Prohibiting the individual defendants, and listed corporations and entities, their servants, employees, attorneys, and those persons in active concert or participation with them from selling, assigning, or transferring or removing from the jurisdiction of this Court without prior approval of the court and upon notice to the United States with an opportunity for the United States to be heard, any right, title, or interest in or any assets from, belonging to, or owed to JENKINS relating to the real property referred to in the forfeiture allegations contained in the indictment.

4. The government further moves this Court that it order that the United States Marshall [sic] Service be allowed access to the aforementioned corporations, and their books and records periodically and at all reasonable times without prior notice to assure that the order sought herein is being complied with and, to this end, that the defendants and their agents cooperate with and provide the information and all the supporting documents necessary for the United States Marshall [sic] Service to discharge their duties.

5. The government further moves this Court to order the defendants and corporations named in the forfeiture allegations of this indictment to comply in all respects with all provisions of this restraining order including maintaining all property in accordance with this order, maintaining insurance on all properties and providing information and cooperating with respect to all matters contained herein, and to abstain from using the above-described properties and enterprises in any way to violate any state, federal or local laws.

6. The government further moves this Court to order the Defendants to refrain from taking any actions in the normal conduct of their business that would not be considered standard, normal business practices of a reasonable and prudent business person.

7. The government further moves this Court to order the "buyer" or his successors and assigns referred to in the Asset Purchase And Sale Agreement with respect to the sale by defendant JENKINS of her interests in **Arcade News, Bellaire News, Doc Johnsons** and **Diners News** pay the periodic amounts due on the note as reflected on the payment schedule included therein to the United States Marshalls [sic] Service, to be held by them for the period of the order and until such time as the proceeds of the note become forfeitable upon conviction.

8. The government further moves this court to order that the original ex parte motion for restraining order, this amended motion for restraining order, and the orders signed by this Court related to these motions be sealed, and that no person shall have access to same except the Clerk or his designated deputies, attorneys for the United States, and authorized representatives of the Federal Bureau of Investigation, Internal Revenue Service and U.S. Marshal Service.

Respectfully submitted,

RONALD G. WOODS
United States Attorney

/s/Jay T. Karahan
JAY T. KARAHAN
Assistant United States Attorney

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CRIMINAL NUMBER:

UNITED STATES OF AMERICA

V.

MARY JANE JENKINS
a/k/a MARIJANE JACKSON
a/k/a LYNDA GRAY ENTRATTER
a/k/a LYNDA IVEY

EVAN PETER PIGMAN
a/k/a PETE PIGMAN

JO ANN ROCHELLI

DAVID CARL STUBBS

RICKIE HERBERT RANNEY
a/k/a RICK RANNEY

ROBERT EUGENE SMITH

CHARLES WILLIAM BOYLE

LARRY WAYNE MALADY

INDICTMENT

THE GRAND JURY CHARGES THAT:

At all times material to this Indictment:

THE ENTERPRISE

1. The defendants MARY JANE JENKINS a/k/a MARIJANE JACKSON a/k/a LYNDA GRAY ENTRATTER a/k/a LYNDA IVEY, EVAN PETER PIGMAN, a/k/a PETE PIGMAN, JO ANN ROCHELLI, DAVID CARL STUBBS, RICKIE

HERBERT RANNEY a/k/a RICK RANNEY, LARRY WAYNE MALADY and the following unindicted corporate entities:

A. Mustatara Investments, N.V. (Mustatara), a foreign holding company in the Netherlands Antilles;

B. Jabar, Limited (Jabar), a foreign holding company in the Bahamas;

C. Phoenix and Associates Management, Ltd. (Phoenix Management), a Nevada corporation, formerly operating as Ibron Industries, Inc., a California corporation, and Praxis Management Company, a California corporation;

D. Saxet Management, Inc. (Saxet Management), a Texas corporation, doing business as **World News,** an adult bookstore/video arcade at 3305 East Highway 80, Abilene, Texas and **Talk of the Town,** an adult bookstore/video arcade at 321 Linda Drive, San Marcos, Texas;

E. Saxet, Inc. (Saxet), a Georgia corporation, doing business as **Bellaire News,** an adult bookstore/video arcade at 5807 Bellaire Boulevard, Houston, Texas; **Arcade News,** an adult bookstore/video arcade at 5821 Hillcroft, Houston, Texas; and **Doc Johnson's Arcade,** an adult bookstore/video arcade at 6431 Hillcroft, Houston, Texas;

F. La Grange Trading Company (La Grange Trading), a California corporation, doing business as **Diner's News,** an adult bookstore/video arcade at 240 Westheimer, Houston, Texas; **Apollo** News, an adult bookstore/video arcade at 2376 Austin Highway, San Antonio, Texas; **Pleasure Shoppe,** an adult bookstore/video arcade at 603 West Oltorf, Austin, Texas; and **Airline Book Store,** an adult bookstore/video arcade at 1824 Airline Highway, Kenner, Louisiana;

G. Lamar Avenue Books, Inc. (Lamar Avenue Books), a Tennessee corporation, doing business as **Cherokee Theater,**

an adult bookstore/video arcade at 2747 Lamar Avenue, Memphis, Tennessee;

H. East Brooks Books, Inc. (East Brooks Books), a Tennessee corporation, doing business as **Airport Theater,** an adult bookstore/video arcade at 2214 East Brooks Road, Memphis, Tennessee, and **Get Well Bookmart,** an adult bookstore/video arcade at 1275 Get Well Road, Memphis, Tennessee;

I. Business Financial Services, Inc. (Business Financial services), a Georgia corporation, doing business as **West Knoxville News,** an adult bookstore/video arcade at 5005 Kingston Pike, Knoxville, Tennessee;

J. Anwar Enterprises, Inc. (Anwar Enterprises), an Alabama corporation, doing business as **Birmingham Books,** an adult bookstore/video arcade at 7610 First Avenue North, Birmingham, Alabama;

K. Western Adult Enterprises, Inc. (Western Adult Enterprises), an Alabama corporation, doing business as **Alabama Adult Books,** an adult bookstore/video arcade at 901 Fifth Avenue North, Birmingham, Alabama;

L. Richland Bookmart, Inc. (Richland Bookmart), a South Carolina corporation, doing business as **Town and Country,** an adult bookstore/video arcade at 7011 Clinton Highway, Knoxville, Tennessee;

M. Sommer Avenue Books, Inc. (Sommer Avenue Books), a Tennessee corporation, doing business as **Paris Theater,** an adult bookstore/video arcade at 2432 Sommer Avenue, Memphis, Tennessee;

N. Stuart Services Company (Stuart Services), a Nevada corporation;

O. Jabar Leasing Company, Ltd. (Jabar Leasing), a California corporation;

P. Sixth Ray, Inc. (Sixth Ray), a Georgia corporation, doing business as **Unique Beauty Supply** in the state of Georgia; and others known and unknown to the Grand Jury, in Houston, Texas, constituted an enterprise as defined by Title 18, United States Code, Section 1961(4), namely, corporations and individuals associated in fact (hereinafter referred to as the enterprise), whose leaders, members and associates engaged in various activities in the Southern District of Texas and elsewhere, including:

(1) The transportation in interstate commerce of obscene magazines and videotape recordings, in violation of Title 18, United States Code, Sections 2, 1462 and 1465;

(2) The operation of adult bookstores and video arcades which sold and distributed obscene magazines, and which publicly displayed obscene videotape recordings in peep shows for a profit, in violation of Section 43.23 of the Texas Penal Code.

* * *

COUNT ONE (RICO)

THE GRAND JURY CHARGES THAT:

1. Introductory paragraphs 1 through 3 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or about June of 1978 and continuously thereafter up to and including the date of this Indictment, within the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, the defendants MARY JANE JENKINS, EVAN PETER PIGMAN, J0 ANN ROCHELLI, DAVID CARL STUBBS, RICKIE HERBERT RANNEY, LARRY WAYNE MALADY and others both known and unknown to the Grand Jury, being persons employed by and

associated with the criminal enterprise, did unlawfully, willfully, and knowingly conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise the activities of which affected interstate and foreign commerce, through a pattern of racketeering activity, in violation of Title 18, United States Code, Section 1962(c).

RACKETEERING ACTS

3. The pattern of racketeering activity as defined by Title 18, United States Code, Sections 1961(1)(A), 1961(1)(B), and 1961(5) consisted of the following:

RACKETEERING ACT ONE

In or about March of 1986, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendant MARY JANE JENKINS and LARRY WAYNE MALADY did knowingly use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of an obscene, lewd, lascivious, and filthy book, pamphlet, picture, paper, writing, print, drawing, figure, image and other matter of indecent and immoral character, namely, a magazine entitled **"Bitch In Heat,"** which was transported by said common carrier from Los Angeles, California to Houston, Texas. [VIOLATION: Title 18, United States Code, Sections 1462 and 2].

RACKETEERING ACT TWO

In or about June of 1986, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendant MARY JANE JENKINS and LARRY WAYNE MALADY did knowingly use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of an obscene, lewd, lascivious, and filthy book, pamphlet, picture, paper, writing, print, drawing, figure, image and other matter of indecent and

immoral character, namely, a magazine entitled **"Hot 'N' Juicy,"** which was transported by said common carrier from Cleveland, Ohio, to Houston, Texas. [VIOLATION: Title 18, United States Code, Sections 1462 and 2].

RACKETEERING ACT THREE

In or about November of 1986, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendant MARY JANE JENKINS, did knowingly use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of an obscene, lewd, lascivious, and filthy book, pamphlet, picture, paper, writing, print, drawing, figure, image and other matter of indecent and immoral character, namely, a magazine entitled **"Lusty Lady,"** which was transported by said common carrier from Los Angeles, California to Houston, Texas. [VIOLATION: Title 18, United States Code, Sections 1462 and 2].

RACKETEERING ACT FOUR

In or about May of 1987, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendants MARY JANE JENKINS, EVAN PETER PIGMAN, and JO ANN ROCHELLI, each aiding and abetting one another, did knowingly use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of an obscene, lewd, lascivious, and filthy book, pamphlet, picture, paper, writing, print, drawing, figure, image and other matter of indecent and immoral character, namely, a magazine entitled **"3-Way Cum, A Gourmet Special #14,"** which was transported by said common carrier from Los Angeles, California, to Houston, Texas. [VIOLATION: Title 18, United States Code, Sections 1462 and 2].

RACKETEERING ACT FIVE

In or about July of 1987, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendants MARY JANE JENKINS, EVAN PETER PIGMAN, and JO ANN ROCHELLI, each aiding and abetting one another, did knowingly use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of an obscene, lewd, lascivious, and filthy book, pamphlet, picture, paper, writing, print, drawing, figure, image and other matter of indecent and immoral character, namely, a magazine entitled **"Stroke, White Trash Token Bisexuals,"** which was transported by said common carrier from Cleveland, Ohio, to Houston, Texas. [VIOLATION: Title 18, United States Code, Sections 1462 and 2].

RACKETEERING ACT SIX

On or about June 7, 1988, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendants MARY JANE JENKINS, EVAN PETER PIGMAN, JO ANN ROCHELLI, DAVID CARL STUBBS, and RICKIE HERBERT RANNEY, each aiding and abetting one another, did knowingly use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of obscene, lewd, lascivious and filthy pictures, motion picture films, electrical transcriptions and other matter of indecent character, namely, videotape recordings entitled **"EuroStars II," "Full Load," "Black Bullet," "Extreme Urge," "Irresistible," "Sex Lies," "Suzy Cue," "Employee's Revenge"** and **"Cum Shot Review, Volume I,"** which were transported by said common carrier from Cleveland, Ohio, to Houston, Texas. [VIOLATION: Title 18, United States Code, Sections 1462 and 2].

RACKETEERING ACT SEVEN

On or about June 14, 1988, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendants MARY JANE JENKINS, EVAN PETER PIGMAN, JO ANN ROCHELLI, DAVID CARL STUBBS, and RICKIE HERBERT RANNEY, each aiding and abetting one another, did knowingly use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of obscene, lewd, lascivious and filthy pictures, motion picture films, electrical transcriptions and other matter of indecent character, namely, videotape recordings entitled **"Cum Shot Review, Volume 4," "Full Metal Bikini," "The Raincoat Crowd," "The Godmother, Part I," "Casing the Crack," "That's Erotic," "Introducing Kascha," "The Girls of Ball Street," "Two Into One," "Male Stampede," "The Golden Boys"** and **"Black Mistress Supreme,"** which were transported by said common carrier from Cleveland, Ohio, to Houston, Texas [VIOLATION: Title 18, United States Code, Sections 1462 and 2]

RACKETEERING ACT EIGHT

On or about June 21, 1988, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendants MARY JANE JENKINS, EVAN PETER PIGMAN, JO ANN ROCHELLI, DAVID CARL STUBBS and RICKIE HERBERT RANNEY, each aiding and abetting one another, did knowingly use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of obscene, lewd, lascivious and filthy pictures, motion picture films, electrical transcriptions and other matter of indecent character, namely, videotape recordings entitled **"Latin Tri-Sexual Encounters, No. 8," "Soul and Salsa," "Thinking Big," "Double Agents," "A Girl Named Sam," "Euro Stars I," "Only the Strong Survive"** and **"Anal**

Pleasures," which were transported by said common carrier from Cleveland, Ohio, to Houston, Texas. [VIOLATION: Title 18, United States Code, Sections 1462 and 2

RACKETEERING ACT NINE

On or about June 28, 1988, in the Houston Division of the Southern District of Texas and elsewhere, and within the jurisdiction of this Court, defendants MARY JANE JENKINS, EVAN PETER PIGMAN, JO ANN ROCHELLI, DAVID CARL STUBBS and RICKIE HERBERT RANNEY, each aiding and abetting one another, did use and aid and abet the use of a common carrier, namely, United Parcel Service, for the carriage in interstate commerce of obscene, lewd, lascivious and filthy pictures, motion picture films, electrical transcriptions and other matter of indecent character, namely, videotape recordings entitled **"In The Raw," "Good Jac 2," "Babes in Joyland," "Hot Rods"** and **"Mrs. Rodgers' Neighborhood,"** which were transported by said common carrier from Cleveland, Ohio, to Houston, Texas. [VIOLATION: Title 18, United States Code, Sections 1462 and 2].

RACKETEERING ACT TEN

On or about July 13, 1988, within the Southern District of Texas, defendants MARY JANE JENKINS, EVAN PETER PIGMAN, JO ANN ROCHELLI and LARRY WAYNE MALADY did unlawfully, knowingly, and intentionally cause the wholesale promotion of obscene material at Diner's News in Houston, Harris County, Texas, to include four obscene magazines the content and character of which they well knew, namely, **"Anal Cum;" "First Time Fuck, Vol. I;" "Knocked Up and Horney"** and **"Man Eaters, Collectors Edition, No. 18,"** in violation of Section 43.23, Texas Penal Code, an act of racketeering involving dealing in obscene matter, as defined in Title 18, United States Code, Section 1961(1)(A).

* * *

FORFEITURE ALLEGATIONS

1. Introductory paragraphs 1 through 3 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. Counts One and Two of this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 1963.

3. Through the aforesaid pattern of racketeering activity, the defendant JENKINS has from in or about March of 1986 to on or about July 13, 1988 acquired and maintained interests in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1) and are further described as follows:

A. All interests in, assets of or proceeds from the sale or disposition of:

(1) Mustatara Investments, N.V. (Mustatara), a foreign holding company in the Netherlands Antilles;

(2) Phoenix and Associates Management, Ltd. (Phoenix Management), a Nevada corporation, formerly operating as Ibron Industries, Inc., a California corporation, and Praxis Management Company, a California corporation;

(3) Sixth Ray, Inc. (Sixth Ray), a Georgia corporation, doing business as **Unique Beauty Supply.**

(4) Jabar, Limited (Jabar), a foreign holding company in the Bahamas;

(5) Saxet Management, Inc. (Saxet Management), a Texas corporation, doing business as **World News,** an adult bookstore/video arcade at 3305 East Highway 80, Abilene,

Texas and **Talk of the Town**, an adult bookstore/video arcade at 321 Linda Drive, San Marcos, Texas;

(6) Saxet, Inc. (Saxet), a Georgia corporation, doing business as **Bellaire News**, an adult bookstore/video arcade at 5807 Bellaire Boulevard, Houston, Texas; **Arcade News,** an adult bookstore/video arcade at 5821 Hillcroft, Houston, Texas; and **Doc Johnson's Arcade**, an adult bookstore/video arcade at 6431 Hillcroft, Houston, Texas;

(7) La Grange Trading Company (La Grange Trading), a California corporation, doing business as **Diner's News,** an adult bookstore/video arcade at 240 Westheimer, Houston, Texas; **Apollo News**, an adult bookstore/video arcade at 2376 Austin Highway, San Antonio, Texas; **Pleasure Shoppe,** an adult bookstore/video arcade at 603 West Oltorf, Austin, Texas; and **Airline Book Store,** an adult bookstore/video arcade at 1824 Airline Highway, Kenner, Louisiana;

(8) Lamar Avenue Books, Inc. (Lamar Avenue Books), a Tennessee corporation, doing business as **Cherokee Theater,** an adult bookstore/video arcade at 2747 Lamar Avenue, Memphis, Tennessee;

(9) East Brooks Books, Inc. (East Brooks Books), a Tennessee corporation, doing business as **Airport Theater,** an adult bookstore/video arcade at 2214 East Brooks Road, Memphis, Tennessee, and **Get Well Bookmart,** an adult bookstore/video arcade at 1275 Get Well Road, Memphis, Tennessee;

(10) Business Financial Services, Inc. (Business Financial Services), a Georgia corporation, doing business as **West Knoxville News**, an adult bookstore/video arcade at 5005 Kingston Pike, Knoxville, Tennessee;

(11) Anwar Enterprises, Inc. (Anwar Enterprises), an Alabama corporation, doing business as **Birmingham Books,**

an adult bookstore/video arcade at 7610 First Avenue North, Birmingham, Alabama,

(12) Western Adult Enterprises, Inc. (Western Adult Enterprises), an Alabama corporation, doing business as **Alabama Adult Books,** an adult bookstore/video arcade at 901 Fifth Avenue North, Birmingham, Alabama;

(13) Richland Bookmart, Inc. (Richland Bookmart), a South Carolina corporation, doing business as **Town and Country,** an adult bookstore/video arcade at 7011 Clinton Highway, Knoxville, Tennessee;

(14) Sommer Avenue Books, Inc. (Sommer Avenue Books), a Tennessee corporation, doing business as **Paris Theater,** an adult bookstore/video arcade at 2432 Summer Avenue, Memphis, Tennessee;

(15) Stuart Services Company (Stuart Services), a Nevada corporation;

(16) Jabar Leasing Company, Ltd. (Jabar Leasing), a California corporation;

B. The following vehicle or, if sold, the proceeds therefrom:

(1) One 1987 Nissan 300ZX coupe, VIN JNlCZ1452HX150668, registered to Gelco Corporation/Lynda Entratter, 605 Old Ballas Road, St. Louis, Missouri 63141.

C. The following bank accounts and all funds credited to the accounts as of the date of this indictment:

BANK	ACCOUNT NAME	ACCOUNT NO.
Sunburst Bank Southhaven, Mississippi	Sommer Avenue Books, Inc.	4038203
Sunburst Bank Southhaven, Mississippi	Sommer Avenue Books, Ins. Special Account	4041382
Sunburst Bank Southhaven Mississippi	East Brooks Books, Inc.	4038214
Sunburst Bank Southhaven, Mississippi	East Brooks Books, Inc.	4038225
Sunburst Bank Southhaven, Mississippi	Lamar Avenue Books, Inc.	4038192
Third National Bank Knoxville, Tennessee	Town & Country	22041313
Third National Bank Knoxville, Tennessee	Business Financial Services, Inc., DBA West Knoxville News	05524504
NCNB Texas National Bank Abilene, Texas	Stuart Services, Inc.	3620176273
NCNB Texas National Bank Abilene, Texas	North 3rd	362013164

Merchants Bank Kenner, Louisiana	La Grange Trading Co. DBA Airline Bookstore	67843
The Boatmen's National Bank St. Louis, Missouri	Phoenix & Associates Management, Ltd.	350119022318
First Bank St. Louis, Missouri	Jabar Leasing Co., Ltd.	6956200
Etowah Bank Canton, Georgia	Jabar Leasing Co., Ltd.	0072175
Colonial Bank St. Louis, Missouri	Alabama Books & Western Adult Enterprises	0503041101
Colonial Bank St. Louis, Missouri	Anwar Enterprises DBA Birmingham Books	0502839901
Turks and Caicos Banking Company, Ltd. Grand Turk Turks and Caicos Islands West Indies	Mustatara Investments, N.V.	7320010G847

D. The following personal property and the proceeds therefrom:

(1) approximately $33,880.97 cash seized by agents of the Federal Bureau of Investigation from the safe in STUBB'S warehouse, 7397 Ashcroft, Houston, Texas on June 30, 1988;

(2) cashiers check and the proceeds therefrom seized by agents of the Federal Bureau of Investigation from the safe in STUBB'S warehouse, 7397 Ashcroft, Houston, Texas on June 30, 1988 as follows:

a. First National Bank, Paragould, Arkansas cashier's check #29542, 6/29/88, to Saxet Special Account in the amount of $1,500.00;

b. First National Bank, Paragould. Arkansas cashier's check #29544, 6/29/88, to White Fabricating Co. in the amount of $2,719.75;

c. First National Bank, Paragould, Arkansas cashier's check #29541, 6/29/88, to Concorde Development Co. in the amount of $2,000.00;

d. Colonial Bank, Birmingham, Alabama official cashier's check #314944155, 6/27/88, to Alabama Adult Books in the amount of $1,795.00;

e. Merchant's Bank, Kenner, Louisiana cashier's check #A138645, 6/27/88, to White Fabricating Co., Inc. in the amount of $3,856.50;

(3) approximately $9,033.18 seized by agents from the Federal Bureau of Investigation from a safe inside Arcade News Bookstore, 5821 Hillcroft, Houston, Texas on June 30, 1988.

E. The following real property and the proceeds therefrom:

(1) Lots 6 and 7 of Forest Park Addition and in Block No. 4907 A of the city of St. Louis, State of Missouri, having an aggregate front of 200 feet on the north line of said addition; bounded on the east by lot no. 5 and the west by lot no. 8 of said block and addition and south by Portland Place, together with all buildings, fixtures, and improvements thereon.

4. The defendant JENKINS further had an interest in, security of, claim against and property and contractual rights which afforded a source of influence over the enterprise named herein which the defendant JENKINS established, operated, controlled,

conducted and participated in the conduct of in violation of Title 18, United States Code, Section 1962, and which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(2). The United States' intent to forfeit includes, but is not limited to, the defendant JENKINS total interests in the assets or the proceeds thereof as set forth in Sections A, B, C, D, and E of Paragraph 3 of these forfeiture allegations, incorporated herein by reference.

5. Through the aforesaid pattern of racketeering activity, the defendant JENKINS had interests in, security of, claims against and property and contractual rights over the property described herein, all of which afforded a source of influence over the enterprise named herein which the defendant JENKINS established, operated, controlled, conducted and participated in the conduct of in violation of Title 18, United States Code, Section 1962, thereby making such property subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(2).

6. The defendants further had property constituting, and derived from, any proceeds which the defendants obtained, directly or indirectly, from the aforesaid pattern of racketeering activity in violation of Title 18, United States Code, Section 1962, and which property is subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(3). The United States intent to forfeit includes, but is not limited to, the defendants interests in the assets and the proceeds thereof as set forth in Sections A, B, C, D, and E, of paragraph 3 of these forfeiture allegations, incorporated herein by reference.

7. Through the aforesaid pattern of racketeering activity, the defendants had property constituting and derived from any proceeds which the defendants obtained, directly and indirectly, from the racketeering activity herein which the defendants

established, operated, controlled, conducted and participated in the conduct of in violation of Title 18, United States Code, Section 1962, thereby making such property subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963 (a)(3).

A TRUE BILL:

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FOREPERSON OF THE
GRAND JURY

RONALD G. WOODS
United States Attorney
Southern District of Texas

By: _____
KAREN J. SURACI
Special Attorney
United States Department of Justice

_____
JAY T. KARAHAN
Assistant United States Attorney
Southern District of Texas